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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DEXTER A. BURLEIGH,
DOMINIQUE BERTA, and JERRY C. PHILLIPS

Appeal 2009-003650
Application 09/724,606¹
Technology Center 2100

Before LANCE LEONARD BARRY, THU A. DANG, and
CAROLYN D. THOMAS, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The real party in interest is ConocoPhillips Company.

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1-44, which are all the claims pending in the application. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

The present invention relates to managing related information generated by a plurality of individuals. *See generally* Abstract.

Claim 1 is illustrative:

1. An information management system, comprising:
 - a data repository storing related hydrocarbon-producing portfolio data tied to a key parameter field; and
 - at least one application server providing a plurality of different applications to a plurality of users, the at least one application server operatively coupled to the data repository, at least one of the plurality of different applications generating at least some related hydrocarbon-producing portfolio data having the key parameter field, wherein the data repository can be updated with the related hydrocarbon-producing portfolio data generated by each of the plurality of different applications having the key parameter field, the at least one application server being operatively connected to the data repository to serve the related hydrocarbon-producing portfolio data from the data repository when ones of the plurality of different applications use and generate the related hydrocarbon-producing portfolio data having the key parameter field, the management system further updating data relating to a property in a real time environment based on input from multiple users using different programs for different tasks.

Appellants appeal the following six (6) rejections:

R1: Claims 1-7, 15-27 and 41 under 35 U.S.C. § 103 as being unpatentable over Cwenar (US 5,893,079, Apr. 6, 1999) and Armitage (US 5,475,589, Dec. 12, 1995).

R2: Claims 8-11 under 35 U.S.C. § 103 as being unpatentable over Cwenar, Armitage, and Dembo (US 5,148,365, Sep. 15, 1992).

R3: Claim 12 under 35 U.S.C. § 103 as being unpatentable over Cwenar, Armitage, and O'Shaughnessy (US 6,484,151 B1, Nov. 19, 2002, filed Jul. 23, 1999).

R4: Claims 13 and 14 under 35 U.S.C. § 103 as being unpatentable over Cwenar, Armitage, and Lu (US 6,373,489 B1, Apr. 16, 2002, filed Jan. 12, 1999).

R5: Claims 28-40 under 35 U.S.C. § 103 as being unpatentable over Bentley (US 6,341,291 B1, Jan. 22, 2002, filed Apr. 22, 1999), Armitage, and Sperandeo (Pat. App. Pub. No.: US 2005/0108139 A1, May 19, 2005, effectively filed Mar. 12, 1999).

R6: Claims 42-44 under 35 U.S.C. § 103 as being unpatentable over Cwenar, Armitage, and Myers (US 6,959,268 B1, Oct. 25, 2005, effectively filed Sep. 21, 1999).

FACTUAL FINDINGS

We adopt the Examiner's factual findings as set forth in the Answer. (Ans. 3, *et seq.*).

ANALYSIS

Rejection under 35 U.S.C. § 103 as being unpatentable over Cwenar and Armitage

Claims 1-4, 15, 19-22, 24-27, and 41

Issue 1: Did the examiner err in finding that the combination of Cwenar and Armitage discloses “updating data relating to a property in a real time environment,” as set forth in claim 1?

Appellants contend that “there is no teaching or suggestion in *Cwenar* of real-time updating of the database. *Armitage* does not teach real-time updating of the database, thus the combination fails the all element test.” (App. Br. 13.)

The Examiner found that “the environment in which Cwenar intends must be done through ‘real-time’ to avoid errors created in the records.” (Ans. 14.) We agree with the Examiner.

Specifically, Cwenar discloses processing investment data and storing the same in a central relational database. (*See* Abstract.) Cwenar further discloses that “[a]s data changes, the data stored in server 4 will be updated and the users will be provided with the changed data on a global basis” (col. 5, ll. 60-63) and that “the server means 4 will preferably be built upon a relational database which will manage the central database” (col. 8, ll. 42-44). In other words, Cwenar’s server manages the central database and as data changes, the stored data is updated. We find that one of ordinary skill in the art would readily see the “*as data changes*” phraseology in Cwenar as correlating to and suggesting a real-time environment. We further agree with the Examiner that Cwenar’s processing of investment data suggests a real-time environment as such data is generally known to be constantly changing and real-time updates is almost an necessity in this market. As such, we find that Cwenar teaches and/or suggests a real-time updating of data.

Issue 2: Did the Examiner err in finding that the combined teachings of Cwenar and Armitage discloses storing related hydrocarbon-producing portfolio data tied to a key parameter field?

Appellants contend that “the Examiner does not supply any evidence of hydrocarbon-producing **portfolio** data has been disclosed in *Armitage*. The seismic data translation methodology taught by *Armitage* is also limited in that it evaluates a single **prospect** at a time. Thus, no hydrocarbon portfolio (collection) data is generated.” (App. Br. 16-17, emphasis original.)

The Examiner found that Cwenar discloses “storing portfolio data tied to a key parameter field” (Ans. 3) and Armitage “discloses [a] system for evaluating seismic sequence lithology and property with predicting potential hydrocarbon reservoir and hydrocarbon data.” (Ans. 4.) We agree with the Examiner.

In essence, the Examiner found that Cwenar discloses a system for storing data tied to a parameter field as Cwenar uses software tools that enhance the flexibility of data fields’ enriched spreadsheets (Ans. 17). Not only do we endorse and adopt these Examiner’s findings as laid out in the Answer, but Appellants have failed to rebut such findings. Filing a Board Appeal does not, unto itself, entitle Appellants to a de novo review of all aspects of a rejection. If Appellants fail to present arguments on a particular issue – or, more broadly, on a particular rejection – the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection. *Id.* (citing, *inter alia*, *Hyatt v. Dudas*, 551 F.3d 1307, 1313-14 (Fed. Cir. 2008) (the Board may treat arguments appellant failed to make for a given ground of rejection as waived)).

The Examiner further adds that the steps used in Cwenar could be used with databases storing any kind of data, including hydrocarbon-producing portfolio data (Ans. 17). Again, we agree with the Examiner. We also add that the claimed “hydrocarbon-producing portfolio data” is merely non-functional descriptive material in that it refers to content that does not exhibit a functional interrelationship with the substrate and does not affect the way the computing processes are performed. *See* MPEP § 2106.01. In a precedential decision, an expanded panel recently held that elements that do not affect the claimed process are non-functional material and are merely descriptive. *See Ex parte Nehls*, 88 USPQ2d 1883, 1887-1888 (BPAI 2008) (precedential).

Thus, the Examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See In re Lowry*, 32 F.3d 1579, 1582-1583 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004) (nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious). *See also Ex parte Mathias*, 84 USPQ2d 1276 (BPAI 2005) (nonprecedential), *aff’d*, 191 Fed.Appx. 959 (Fed. Cir. 2006). Nonetheless, the Examiner has gone the extra mile and found in the secondary reference, i.e., Armitage, a system that discloses evaluating and storing data related to a hydrocarbon reservoir and hydrocarbon data, and reasoned that it would have been obvious to use Cwenar’s system with Armitage’s type of data, or any data (Ans. 17-18). We agree.

As Appellants have not rebutted the Examiner’s findings that Cwenar discloses a system that manipulates a collection of data tied to a key

parameter field and the “type of data” has been found not to affect the way the computing processes are performed, we find no error in the Examiner’s obviousness rejection of representative claim 1, essentially for the reasons indicated by the Examiner. Claims 2-4, 19, 20, 22, 24-27, and 41, which recite commensurate limitations, stand for similar reasons.

Claims 5, 6, and 7

Issue 3: Did the Examiner err in finding that the cited art teaches at least one [application] selected from the group consisting of a database management application, a portfolio management application, and a portfolio forecast application?

Appellants contend that the Examiner’s findings “relates to development of applications, not to simultaneous use of applications” (App. Br. 18) (emphasis omitted).

The Examiner found that Cwenar “discloses [a] database management system to cooperatively develop applications and update data and therefore these applications must be used or selected” (Ans. 19, column and line locations omitted). We agree with the Examiner.

Here, Appellants contend that the cited art does not disclose simultaneous use of applications. However, Appellants’ arguments are not commensurate with the actual scope of instant claim 5 (dependent upon claim 1). Claim 5 does not require simultaneous use of applications. Claim 5 merely discloses an application server providing a plurality of different applications, wherein the plurality of different applications comprises at least *one* selected from The Examiner has shown that Cwenar discloses a database management system, and hence discloses a database

management application (Ans. 19), i.e., one of the claimed applications. Thus, based on the record before us, we find no error in the Examiner's obviousness rejection of claim 5 which calls for, in pertinent part, at least one [application] selected from the group consisting of a database management application. Dependent claims 6 and 7 fall for similar reasons.

Claims 16, 17, 26, and 27

Issue 4: Did the Examiner err in finding that the citing art discloses creating an optimized drilling schedule, as set forth in claim 16?

The Examiner found that Armitage "must include creating [a] drilling schedule" because "Armitage clearly discloses hydrocarbon producing data involving time geometric data used to prognosticate with an accuracy related to the correctness of that prognosis in drilling" (Ans. 19).

Appellant contend that "[t]here is no relevance of [the cited portion] to drilling, let alone creating a drilling schedule" (App. Br. 19).

The Examiner directs our attention to Armitage's disclosure of prognosticating rock properties critical to exploration and production. Specifically, here Armitage discloses that "various rock properties critical to exploration and production, i.e., time geometric data and the parameters listed in FIG. 1, were prognosticated spatially with an accuracy related to the correctness of that prognosis as proven in drilling." (Col. 2, ll. 61-65.)

In other words, Armitage discloses using rock properties that have been proven in drilling. However, claim 16 requires "creating an optimized drilling schedule." (*see* Claim 16.) We find that the cited portion of Armitage does not provide adequate support for the Examiner's

interpretation that Armitage “must” include creating an optimized drilling schedule.

Given that the Examiner has not established that Armitage discloses the “creating an optimized drilling schedule” limitation of claim 16, we conclude that Appellants have shown error in the Examiner’s rejection of claim 16. Because claims 17, 26, and 27 contain a similar drilling schedule component, and are rejected on the same basis as claim 16, we also cannot sustain the rejection of claims 17, 26, and 27.

Claim 18

Issue 5: Did the Examiner err in finding that the citing art discloses users, as set forth in claim 18?

Appellant contends that the Examiner’s findings have “no relevance . . . to the variety of the users specified in claim[] 18.” (App. Br. 20.)

We find that the variety of users specified in claim 18 do not affect the way the computing process is performed. In other words, non-functional descriptive material refers to data content that does not exhibit a functional interrelationship with the substrate and does not affect the way the computing processes are performed. *See* MPEP § 2106.01.

As such, the Examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See In re Lowry*, 32 F.3d 1579, 1582-1583 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004) (nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious). *See also Ex parte Mathias*, 84 USPQ2d 1276 (BPAI 2005) (nonprecedential), *aff'd*, 191 Fed.Appx. 959

(Fed. Cir. 2006). Here, the type of user is merely nonfunctional descriptive material.

Thus, based on the record before us, we find no error in the Examiner's obviousness rejection of claim 18, as claim 18 merely discloses non-functional descriptive material.

Claim 23

Issue 6: Did the Examiner err in finding that the cited art discloses a plurality of modules, each of the application modules is directed to at least one of the respective users, as set forth in claim 23?

Appellant contends that the cited "portion of *Cwenar* appears to be teaching a firewall between different users and actually teaches away from the invention of claim 23." (App. Br. 20-21.)

The Examiner found that *Cwenar* discloses "a parent application comprising a plurality of modules." (Ans. 7.) We agree with the Examiner.

Specifically, *Cwenar* discloses that "[o]ne of the advantage of employing a dynamically linked library (DLL) architecture is that firewalls are created between each specific module . . . creates a parent window." (Col. 7, ll. 57-63.) In other words, *Cwenar* discloses a plurality of modules and a parent window. Appellant fails to explain why such a disclosure teaches away from claim 23. Thus, based on the record before us, we find no error in the Examiner's obviousness rejection of claim 23.

*Rejection under 35 U.S.C. § 103 as being unpatentable over
Cwenar, Armitage, and Dembo*

Claims 8-11

Issue 7: Did the Examiner err in finding that the cited art discloses hydrocarbon producing portfolio?

Appellant contends that “neither *Cwenar* nor *Armitage* deals with hydrocarbon producing portfolio.” (App. Br. 28.)

For at least the reasons noted *supra* regarding issue 2, we affirm the Examiner’s rejection of claims 8-11, as the same arguments are being presented here.

*Rejection under 35 U.S.C. § 103 as being unpatentable over
Cwenar, Armitage, and O’Shaughnessy*

Claim 12

Issue 8: Did the Examiner err in finding that the cited art discloses hydrocarbon producing portfolio?

Appellant contends that “neither *Cwenar* nor *Armitage* deals with hydrocarbon producing portfolio.” (App. Br. 29.)

For at least the reasons noted *supra* regarding issue 2, we affirm the Examiner’s rejection of claim 12, as the same arguments are being presented here.

*Rejection under 35 U.S.C. § 103 as being unpatentable over
Cwenar, Armitage, and Lu*

Claims 13 and 14

Issue 9: Did the Examiner err in finding that the cited art discloses members of an asset development team having different functions?

Appellant contends that “[t]he Lu reference does not . . . teach the different functions related to the development and management of ‘assets’” (App. Br. 31).

The Examiner found that “Lu . . . discloses different functions related to the development and management of assets (col. 1, lines 14-21, Lu).” (Ans. 9-10). We agree.

Specifically, Lu discloses that “[g]eologists, geophysicists and petroleum engineers use models, including computerized models, of the earth’s crust to plan exploration and production of hydrocarbons.” (Col. 1, ll. 14-17.) In other words, Lu discloses different professions that use models related to hydrocarbon production. We find that the claimed “team having different functions” reads on Lu’s above-noted disclosure. As such, we find that the Examiner did not err in rejecting claims 13 and 14.

*Rejection under 35 U.S.C. § 103 as being unpatentable over
Bentley, Armitage, and Sperandeo*

Claims 28-30 and 34-40

Issue 10: Did the Examiner err in finding that the cited art discloses a hydrocarbon portfolio?

Appellant contends that “Bentley is not relevant prior art.” (App. Br. 34.) Appellant further discloses that “Armitage teaches prospect evaluation, not portfolio management. . . . There is no teaching or suggestion and any [sic] of the three references of a hydrocarbon portfolio.” (App. Br. 35.)

The Examiner found that “Armitage, the related art, is used as a secondary reference for the teaching of hydrocarbon-producing databases.” (Ans. 20.) We agree.

For at least the reasons noted *supra* regarding issue 2, we affirm the Examiner’s rejection of claims 28-30 and 34-40, as the same arguments are being presented here.

*Rejection under 35 U.S.C. § 103 as being unpatentable over
Bentley, Armitage, and Sperandeo*

Claims 31, 32, and 33

Issue 11: Did the Examiner err in finding that the cited art discloses a determining an optimized drilling schedule?

Appellant contends that “[t]he lack of such a teaching [optimized drilling schedule] in *Armitage* has been discussed above with reference to claims 16 and 26.” (App. Br. 36.) We agree.

For at least the reasons noted *supra* regarding issue 4, we cannot affirm the Examiner’s rejection of claims 31-33, as the Examiner has failed to show any drilling schedule in the cited art.

*Rejection under 35 U.S.C. § 103 as being unpatentable over
Cwenar, Armitage, and Myers*

Claims 42-44

Issue 12: Did the Examiner err in finding that the cited art discloses only one of the multiple users is allowed to access data relating to the property at a time?

The Examiner found that “Myers discloses a collaborative engineering environment that allows a user to access to a tool and update data in a database and immediately be available to the other users.” (Ans. 13.)

Here, Appellant merely contends that Myers “is not related prior art.” (App. Br. 39.)

As Appellant has not specifically shown “why” Myers is not related prior art and has instead merely given a conclusory statement pertaining

thereto, we find such arguments unpersuasive. We further note that arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived.

The Board reviews the particular findings contested by an appellant anew in light of all the evidence and arguments on that issue. *Ex Parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Filing a Board Appeal does not, unto itself, entitle an appellant to a de novo review of all aspects of a rejection. If an appellant fails to present arguments on a particular issue – or, more broadly, on a particular rejection – the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection. *Id.* (citing, *inter alia*, *Hyatt v. Dudas*, 551 F.3d 1307, 1313-14 (Fed. Cir. 2008) (the Board may treat arguments appellant failed to make for a given ground of rejection as waived)).

For at least the reasons noted *supra*, we affirm the Examiner's rejection of claims 42-44.

DECISION

1. We affirm the Examiner's rejection of claims 1-7, 15, 18-25 and 41 under 35 U.S.C. § 103 as being unpatentable over Cwenar and Armitage.

2. We affirm the Examiner's rejection of claims 8-11 under 35 U.S.C. § 103 as being unpatentable over Cwenar, Armitage, and Dembo.

3. We affirm the Examiner's rejection of claim 12 under 35 U.S.C. § 103 as being unpatentable over Cwenar, Armitage, and O'Shaughnessy.

4. We affirm the Examiner's rejection of claims 13 and 14 under 35 U.S.C. § 103 as being unpatentable over Cwenar, Armitage, and Lu.

5. We affirm the Examiner's rejection of claims 28-30 and 34-40 under 35 U.S.C. § 103 as being unpatentable over Bentley, Armitage, and Sperandeo.

6. We affirm the Examiner's rejection of claims 42-44 under 35 U.S.C. § 103 as being unpatentable over Cwenar, Armitage, and Myers.

7. We reverse the Examiner's rejection of claims 16, 17, 26, and 27 under 35 U.S.C. § 103 as being unpatentable over Cwenar and Armitage.

8. We reverse the Examiner's rejection of claims 31-33 under 35 U.S.C. § 103 as being unpatentable over Bentley, Armitage, and Sperandeo.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED-IN-PART

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